

mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(h) *Motion to quash or modify subpoena*—(1) *Filing procedure*. Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed.

(2) *Response*. Not later than 10 days after the date that the motion was mailed to the responding party, that party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:

(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;

(ii) The date of mailing; and

(iii) The address to which the copy was mailed. If the subpoena involves

testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.

(3) *Ruling on the motion*. The Member or panel to whom the case is assigned will issue an order disposing of the motion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.

(i) *Disobedience*. In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

(Authority: 38 U.S.C. 5711, 5713, 7102(a))

(Authority: 38 U.S.C. 5711, 7102(a), 7107)

[57 FR 4109, Feb. 3, 1992, as amended at 61 FR 20452, May 7, 1996; 66 FR 49538, Sept. 28, 2001]

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General*. If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes